Before The
U.S. HOUSE OF REPRESENTATIVES
Committee on Resources
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Hearing on H.R. 103
Room 1334 Longworth House Office Building

Testimony of
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San Manuel Band of Serrano Mission Indians

Good morning. My name is Deron Marquez. I am the Chairman of the San Manuel Band of Serrano Mission Indians, a federally recognized Indian tribe with a reservation in San Bernardino County, California. I am speaking in support of H.R. 103, sponsored by Congressman J.D. Hayworth, to amend the Indian Gaming Regulatory Act in a way that would protect Indian tribes from being forced, through the withholding of state compact approvals, to enter into labor agreements. I will be testifying from our own historical and tribal perspectives and experiences, which we would appreciate being considered by you as you debate the merits of this important bill.

By way of tribal background, we were among the earliest tribes to enter gaming, which in our case began in the mid-1980's before IGRA was enacted. For many years our tribe has operated, on its own and without any outside management company or financing, one of the most successful tribal governmental casinos in California, and perhaps in the country. Our gaming project is not only vitally important to our tribe and our reservation, having lifted us out of poverty, high unemployment, and limited educational opportunities, but also to our entire community, which continues to have one of the highest unemployment and personal bankruptcy rates in the country.

We are a relatively small tribe, so many of our employees are non-tribal. Our casino employees number in the thousands in total, work entirely on the reservation, and are employed by our tribal government. Both members and nonmembers alike seek to become our employees because of our solid reputation as a fair, safe and secure workplace. We rank among the best and highest paying and benefited employers in our community. We are not unique among tribes, however, in believing that employees deserve a safe and healthy environment, and that tribal governments should be, and typically are, responsive to their needs. Indian gaming is dedicated, structured and oriented to benefit tribal self-sufficiency, and people; not Wall Street or private business interests. Our tribe, like other tribes engaged in gaming throughout the nation, continually rank at the top among those participants in the gaming industry that make charitable contributions, assist local governments and other public institutions with our profits, and, importantly, combat compulsive gambling. Those activities and achievements reflect the fact that our priorities and goals are substantially different than those who are engaged in gaming solely as a business. Congress understood that basic difference when it enacted IGRA to enable us to protect those objectives, a fact that must not be lost as the dialogue over this bill continues.

It is also important in considering my remarks that you know that a few years ago, without any compulsion whatsoever from the state or federal government, or from anyone else for that matter, our tribe engaged in voluntary negotiations with a major labor union that was representing some of our employees, and that we reached a collective bargaining agreement that is still in effect. We are one of the few tribes

that have done so in the Indian gaming industry, although labor agreements have been reached in other tribal industries in the past. Indeed, tribes have sometimes been frustrated, and have had to be vigilant, in their efforts to ensure that unions admitted its members and provided the job training and employment opportunities on reservations that were being made available in that same location to the non-Indian community. Therefore, neither my testimony nor the support of this bill by other tribes, should be viewed as for or against employers or employees, or as pro or con labor unions. Just as State governments have strong interests with regard to their own employees as well as those employed by others within their jurisdiction, Tribes have fundamental policy and governmental interests in regulating employment relationships and activities that take place within their jurisdiction. That is particularly true in the case of tribal governmental gaming, which is so important to funding tribal functions, the arbitrary disruption of which could be disastrous to governmental programs and operations. How those relations are governed must be determined in accordance with tribal governmental policies, since to do otherwise gives rise to the potential, and to the assumption, that forces outside the reservation can and should control tribal governmental operations. That is a concept that has been sought by some who would seek to destroy tribal existence, but has never been the law in this country. Our support for H.R. 103 demonstrates an unfailing belief that attempts by those who would seek to leverage control of tribal governmental operations and workplaces, through the potential economic leverage available through the IGRA compact process, should be resisted and prohibited. Let me illustrate these dangers through what happened, and nearly happened, in our own state of California.

In the mid-1990s, the California tribes and the state, following years of negotiations, were at best able to reach agreement on a tribal-state gaming compact that was acceptable to only a handful of the over 100 federally recognized tribes within the state. Tribal-state compacts are required under IGRA where the nature of the gaming is neither based on bingo, on games traditionally associated with bingo, such as pull-tabs and the like, or on non-banking card games such as poker. Other forms of gambling require a compact, the purpose of which as stated in the Act is to govern "the conduct of gaming activities."[1] A compact is intended to be reached by good faith negotiations between the state and a tribe over such traditional gaming regulatory matters as employee licensing, the kinds of gambling games that will be permitted, regulatory standards, and other topics specific to the *"operation of gaming activities."* The Act is full of references to the regulation of *gaming*, but nowhere suggests that a state can use its own compact consent opportunity under IGRA to obtain control over tribal governments and their employees. Yet that was exactly what was attempted in order to further the agenda of a few commercial interests that were opposed to any gaming by tribes in California in the late 1990's. When the majority of the California tribes opposed a compact that was being negotiated in secret, but that was clearly intended to serve as a model for all California tribes, they proposed that the issue be taken to the people in the form of a constitutional amendment setting forth the proposed terms of a compact, so that it could be openly debated and voted on, up or down, by everyone. That suggestion appeared to have overwhelming bipartisan support of the state legislature, only to be thwarted, ironically, by some out of state gaming interests who persuaded some that the compact initiative should compel collective bargaining on terms far beyond what is required under law, and certainly far in excess of any terms those companies would have supported or tolerated if anyone had tried to enact them under the laws of their own state. As a result, the debate became highly politicized, and the tribes were left with no alternative but to place the measure on the ballot as a statutory initiative, without legislative support.

The problem should have never arisen. It is simply inappropriate to permit the compact process, which was intended to govern the fundamentals of regulating gaming, to be hijacked by unrelated goals, such as the opportunity to serve competitors and to otherwise control tribal jurisdictions. Labor relations

was one vehicle for such an attempt, but there are others as well. They stray far from gaming regulation under the guise of trying to solve complex issues of tribal-state relations. The compact process is not the place for that to occur, and to permit that process diminishes not only tribal sovereignty, but the role that Congress has historically played in these debates.

The footnote to the California story is, of course, that the first compact did go to the people without any labor provisions, but with significant protections for workers which were written in at the insistence of the tribes themselves, and which passed by 64%, only to be stricken down by the courts because, due to the legislative split over the labor issue, it could not be placed in the constitution as originally intended. A second initiative, this time amending the California constitution, did pass, but only as to the forms of gaming to be included in a compact. Simultaneously, tribes reached agreement with a new governor and agreed to a compromise provision governing negotiations, but not agreements, for collective bargaining. Even those provisions, however, which each compacting tribe is required to enact as a "Tribal Labor Relations Ordinance" as a condition of obtaining the compact, violates the tribe's sovereign right to govern the subject of employee labor representation within its jurisdiction, just as other governments now do, and strays dangerously far from the gaming regulation which the compacts were intended to address. One would be surprised to find labor relations provisions in a section of state law governing gaming regulation, but that is essentially what results when compacts like these contain such provisions. They are inappropriate and beyond the scope of IGRA.

This bill would correctly uncouple the gaming regulatory process from a state's (or others') goals or agendas with respect to labor relations. In fact, my only criticism would be that it does not go far enough in prohibiting negotiations over all unrelated issues. These critical programs should not be used as a shortcut to try and coerce solutions to complex and serious questions regarding the relationship between tribes and states that have been, and will continue to be, with us for many years.

Thank you, Mr. Chairman.

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[1] 25 U.S.C. §2710 (d)(3)(A). All future references to the Act are in Title 25 of the U.S. Code.